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REMARKS

Reconsideration is requested.

Claims 1, 2 and 14 have been amended.

Claims 1 through 20 are presented.

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Claim Rejections Under 35 U.S.C. § 102

Claims 1, 2 and 9-12 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,139,861 to *Williams et al.* Applicants submit that claims 1, 2 and 9-12 are not anticipated by *Williams et al.*

Williams et al. relates to a process for bonding blends of dry cellulosic fluff pulp and fusible synthetic pulp or fiber by high-speed dielectric heating in the absence of any dielectric sensitizing material. As used in *Williams et al.*, "high-speed dielectric heating" means

that the blended cellulosic fluff pulp and fusible synthetic pulp or fiber can be bonded by a high frequency electromagnetic field in less than 15 seconds, preferably within 1 to 2 seconds.¹

Consequently, the term "high-speed" in *Williams et al.* appears to simply refer to the amount of time the cellulosic fluff pulp and fusible synthetic pulp or fiber are exposed to a high frequency electromagnetic field. In contrast, the "speed" associated with Applicants' invention is related to a moving of the fibrous layer at a minimum fibrous layer speed.

It is accepted that anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, *arranged as in the claim*. Based on the foregoing, Applicants submit that independent claims 1, 2, 9 and 10 of the present Application patentably distinguish over *Williams et al.* With regard to dependent claims 11 and 12, it is axiomatic that a dependent claim must be read as including the claim from which it depends. Consequently, withdrawal of this rejection is requested.

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¹ Column 3, lines 50-54, of U.S. Patent No. 5,139,861 to *Williams et al.*

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Claim Rejections Under 35 U.S.C. § 103

Claims 3 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,139,861 to *Williams et al.* Applicants submit that claims 3 and 14 are patentable over *Williams et al.*

The Examiner alleges that the “moving speed of the layer and the length of the fiber would have been obvious to one of ordinary skill in the art from optimizing process variables.”² Applicants disagree. In determining whether such optimization is within the teachings of the prior art, one must be ever alert not to read obviousness into an invention on the basis of Applicants’ own statements; that is, one must view the prior art without reading into that art Applicants’ teachings.

In so viewing *Williams et al.*, Applicants find that any experimentation for optimizing a process variable is primarily directed toward the amount of time the blended cellulosic fluff pulp and fusible synthetic pulp or fiber are exposed to a high frequency electromagnetic field. It is not possible to recognize, from the teachings of *Williams et al.*, that there is any relationship between the moving speed of the layer and the amount of time the blended cellulosic fluff pulp and fusible synthetic pulp or fiber are exposed to a high frequency electromagnetic field. This sort of experimentation would not be suggested by the teachings of *Williams et al.* since *Williams et al.* does not appear to have been trying to optimize the moving speed of the layer. The experiments suggested by *Williams et al.* do not reveal the property which Applicants claim, and the Examiner has provided no other basis for the obviousness of the necessary experiments.

The Examiner appears to argue that it would always be obvious for one of ordinary skill in the art to try varying every parameter of a process in order to optimize the effectiveness of the process even if there is no evidence in the record that the cited reference recognized that particular parameter affected the result. As is well known, obvious to try is not the standard of 35 U.S.C. § 103. Disregard for the unobviousness of the results of “obvious to try” experiments disregards the “invention as a whole” concept of § 103. Moreover, overemphasis on the routine nature of the data gathering required to arrive at Applicants’ claimed invention, after its existence became expected, overlooks key aspects of § 103.

In the absence of any teaching or suggestion of a method for forming an airlaid layer having a fibrous layer speed of at least a minimum of about 0.5 m/sec, it appears that the Examiner relies on common knowledge to support her rejection of claims 3 and 14. The Examiner contends that based upon such common knowledge and common sense, it would have been obvious that the moving speed of the layer and the length of the fiber be optimized to any level, including to a fibrous layer speed of at least a

² Page 3 of Detailed Action mailed October 28, 2003.

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minimum of about 0.5 m/sec. However, the Examiner fails to appreciate that in order for a conclusion of obviousness to be based on common knowledge, it must be established that this knowledge was in the art.³ In this instance, the Examiner has failed to establish that Applicants' methods of forming an airlaid layer have been sufficiently known in the art to be considered "common knowledge." Because neither the reference relied on nor the common knowledge of the skilled artisan would have rendered Applicants' claimed invention obvious, the Examiner's rejection of claims 3 and 14 is improper and must be withdrawn.

Applicants urge that the only rational explanation for the Examiner's position is that the Examiner has grounded her rejection on unestablished prior art. However, no fact or other information has been placed in the record that suggests or provides incentive for making Applicants' claimed invention. Consequently, Applicants traverse what appears to be the Examiner's assertion that the claimed invention is "common knowledge" or "well known" or that any fact not of record is "common knowledge" or "well known" since any such fact has neither been raised nor specifically addressed by the Examiner. Should the Examiner persist, however, in basing her rejection on facts within her personal knowledge, Applicants hereby call for the Examiner to support any such facts by way of providing documentary evidence in accordance with MPEP § 2144.03.

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³ *In re Blecher*, 991 F.2d 810, 1993 WL 73726 (Fed. Cir. 1993).

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CONCLUSION

For at least any or all of the foregoing amendments, discussion and remarks, Applicants submit that the present Application is in condition for allowance and that action is earnestly solicited.

In the event the Examiner has any questions concerning this Response, the Examiner is invited to contact Applicants' Attorney at the telephone number provided below.

The Commissioner is hereby authorized to charge any fee(s) which may be required for this Response to Kimberly-Clark Worldwide, Inc., Deposit Account No. 11-0875.

Sincerely,

Timothy J. Rymer, et al.

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Thomas M. Parker
Registration No. 42,063
Attorney for Applicant

Kimberly-Clark Worldwide, Inc.
401 N. Lake St.
P.O. Box 349
Neenah, WI 54957-0349

Tel: 920.721.4043
Fax: 920.721.3129